

U.S. Serial No. 10/694,163

Filed: October 27, 2003

Page 3 of 3

REMARKS

Claims 21-26 are pending in the application. The specification has been amended to update the status of a related application that has now issued. Reconsideration, a withdrawal of the rejection, and a Notice of Allowability are respectfully solicited.

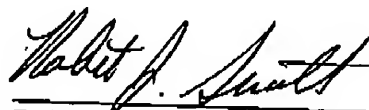
Claims 21-26 are rejected under the judicially-created doctrine of obviousness-type double patenting over claims of U.S. Patent No. 6,558,651. In response, Applicants submit herewith a Terminal Disclaimer in accordance with 37 C.F.R. § 1.321(e). Accordingly, a withdrawal of this rejection is respectfully solicited.

Applicants note that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. See *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). In particular, the Court indicates that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection". *Quad*, 20 USPQ2d at 1394, 1395.

The points of the Office Action being addressed in full, a Notice of Allowability is respectfully solicited.

Respectfully submitted,

Date: December 9, 2004



Robert J. Smith

Reg. No. 40,820

Attorney for Applicants

GlaxoSmithKline  
Corporate Intellectual Property  
Five Moore Drive  
PO Box 13398  
Research Triangle Park, NC 27709-3398  
Direct Phone (919)483-9616  
Facsimile (919)483-7988